

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Wanny Rodriguez t/a Lehigh Avenue Supermarket

(b) County of Residence of First Listed Plaintiff Philadelphia

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

James N. Gross, Esquire
500 Office Center Dr., Fort Washington, PA 19034
267-513-1791

DEFENDANTS

U.S. Department of Agriculture

County of Residence of First Listed Defendant District of Columbia

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input checked="" type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:
Appeal of Agency Decision

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE
08/21/2020

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

DESIGNATION FORM

(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)

Address of Plaintiff: 2837 W. Lehigh Avenue, Philadelphia, PA 19132
Address of Defendant: 1400 Independence Avenue SW, Washington, DC 20250
Place of Accident, Incident or Transaction: Alexandria, VA

RELATED CASE, IF ANY:

Case Number: _____ Judge: _____ Date Terminated: _____

Civil cases are deemed related when **Yes** is answered to any of the following questions:

- | | | |
|--|------------------------------|-----------------------------|
| 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action of this court? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |

I certify that, to my knowledge, the within case ☐ is / ☒ is **not** related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 08/21/2020

[Signature]
Must sign here
Attorney-at-Law / Pro Se Plaintiff

PA ID. No. 40715

Attorney I.D. # (if applicable)

CIVIL: (Place a ✓ in one category only)

A. Federal Question Cases:

- ☐ 1. Indemnity Contract, Marine Contract, and All Other Contracts
☐ 2. FELA
☐ 3. Jones Act-Personal Injury
☐ 4. Antitrust
☐ 5. Patent
☐ 6. Labor-Management Relations
☐ 7. Civil Rights
☐ 8. Habeas Corpus
☐ 9. Securities Act(s) Cases
☐ 10. Social Security Review Cases
☒ 11. All other Federal Question Cases
(Please specify): Appeal of Federal Agency Decision

B. Diversity Jurisdiction Cases:

- ☐ 1. Insurance Contract and Other Contracts
☐ 2. Airplane Personal Injury
☐ 3. Assault, Defamation
☐ 4. Marine Personal Injury
☐ 5. Motor Vehicle Personal Injury
☐ 6. Other Personal Injury (Please specify): _____
☐ 7. Products Liability
☐ 8. Products Liability - Asbestos
☐ 9. All other Diversity Cases
(Please specify): _____

ARBITRATION CERTIFICATION

(The effect of this certification is to remove the case from eligibility for arbitration.)

I, James N. Gross, Esq., counsel of record or pro se plaintiff, do hereby certify:

☐ Pursuant to Local Civil Rule 53.2, § 3(c) (2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs:

☒ Relief other than monetary damages is sought.

DATE: 08/21/2020

[Signature]
Must sign here if applicable
Attorney-at-Law / Pro Se Plaintiff

PA ID. No. 40715

Attorney I.D. # (if applicable)

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

Wanny Rodriguez t/a	:	CIVIL ACTION
Lehigh Avenue Supermarket	:	
v.	:	
U.S. Department of Agriculture	:	NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

<u>08/21/2020</u>	<u>James N. Gross, Esquire</u>	<u>James N. Gross, Esquire</u>
Date	Attorney-at-law	Attorney for Plaintiff
<u>267-513-1791</u>	<u>267-363-1291</u>	<u>jimgross1616@verizon.net</u>
Telephone	FAX Number	E-Mail Address

UNITED STATES DISTRICT COURT

for the

Eastern District of Pennsylvania

Wanny Rodriguez t/a Lehigh Avenue Supermarket

Plaintiff(s)

v.

U.S. Department of Agriculture

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* U.S. Department of Agriculture
1400 Independence Avenue, SW
Washington, DC 20250

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

Wanny Rodriguez t/a	:	
Lehigh Avenue Supermarket	:	CIVIL ACTION
	:	
v.	:	NO.
	:	
United States Department of Agriculture	:	
	:	
	:	

COMPLAINT

1. Plaintiff is the sole proprietor of a grocery store in a highly concentrated residential and commercial section of the City of Philadelphia. The business functions as a retail seller of various food and non-food items for consumption and use in residential households.
2. Defendant is the United States Department of Agriculture which agency serves as the administrator for the Supplemental Nutrition Assistance Program (SNAP).
3. The Supplemental Nutrition Assistance Program (SNAP) was created to financially assist low-income individuals and/or families with the purchase of a variety of food items.
4. Individuals and/or families who qualify to receive these financial benefits are provided, to a vast majority, a card, similar to a “credit card”. Each month the eligible individual or cardholder is allotted a certain sum of money to transact for the purchase of food items at retail food businesses who are authorized to accept and transact the card.
5. Retail food businesses who wish to participate in the program must be authorized to do so through the appropriate division or department of the U.S. Department of Agriculture. Upon the business applicant fulfilling the eligibility requirements, the retailer thereafter is provided, amongst other items, an Electronic Benefit Transfer processor. The benefits

card is “entered” into the processor resulting in the sale of items being accepted by the defendant and the value of same “credited” to the retailer.

6. Plaintiff Lehigh Avenue Supermarket had been a long-standing eligible participant in the program serving economically depressed and low-income individuals and families.
7. By letter dated 11/21/2019, plaintiff was alleged by the defendant to have committed violations of certain terms and conditions of the program’s regulations. The violations were stemmed from Electronic Benefits Transfer transactions that “established clear and repetitive patterns of unusual, irregular and inapplicable SNAP activity for your firm”.
8. The “activity” in question, as alleged by the defendant, constituted “trafficking”. The sanction for (allegedly) engaging in “trafficking” was the permanent disqualification of the plaintiff from the SNAP Program.
9. As an alternative to the sanction of permanent disqualification, the plaintiff could pay an exorbitant and unaffordable fine. The size of the fine was completely unrelated to any amount the food retailer may have benefitted from *had he* engaged in “trafficking”.
10. That by setting such an exorbitant amount for the fine which had to be paid within a short period of time, the only alternative available to the plaintiff was to attempt to rebut the charge or charges of “trafficking”.
11. That permanent disqualification of the plaintiff from the program has resulted, and will continue to result, in a substantial loss of income. Plaintiff avers that such a loss, should it continue, may very well result in the closing of his store and further deprive economically depressed and low-income individuals and families the ability to purchase necessary and “program-eligible” foods within their neighborhood. Such disqualification is especially acute for impoverished single mothers and low-income elderly who have little, if any, independent transportation.

12. That “trafficking” is alleged to occur when the retailer offers the EBT participant cash in return for processing a “phantom” item. The item appears on the receipt provided by the EBT processor and shared with the defendant but is not purchased or possessed by the EBT cardholder.
13. As per a “charge” letter of 11/21/2019 from the defendant, plaintiff was alleged to have engaged in “trafficking” upon the defendant’s review of a series of EBT processor receipts for certain months in 2019. The plaintiff was given 10 days to respond to the “trafficking” charges which stemmed only from a review of the receipts in question.
14. That if plaintiff failed to respond in 10 days to the “charge” letter of 11/21/2019, permanent disqualification would be imposed.
15. On 11/30/2019, plaintiff submitted a reply comprised of 84 pages of transaction receipts. In response to that submission, the defendant requested additional information alleging that the plaintiff’s information could not be “adequately deciphered”.
16. By letter dated 01/30/2020, the plaintiff was informed by a branch (Repair Operations Division) of the defendant, that he had been permanently disqualified from the program.
17. Though the defendant, with the aid of counsel herein, preserved his request for a review of the imposition of permanent disqualification by the defendant’s Administrative Review Branch, the permanent disqualification was imposed as of 01/30/2020.
18. Plaintiff exercised his right to request administrative review which was to be determined only by written submission(s). Plaintiff offered such a submission on 04/06/2020.
19. As anticipated, the Administrative Review Branch, by whom plaintiff’s submission was alleged to have been considered, sustained the imposition of permanent disqualification. This Final Agency Decision was circulated to the plaintiff on 07/22/2020.

20. Plaintiff, by filing the instant complaint is exercising his right to *judicial* review of the final agency decision/determination pursuant to 7 U.S.C. §2023.
21. In support of this complaint, plaintiff avers that the “evidence”, utilized by the defendant through its designated divisions or branches in reaching the Final Agency Decision, did not “establish clear and repetitive patterns of unusual, irregular SNAP activity for your type of firm”.
22. Plaintiff further avers that the “evidence” as proffered by the defendant, through its designated divisions or branches, was insufficient to support permanent disqualification.
23. Plaintiff avers that the process undertaken to permanently disqualify his store from participation in SNAP was no more than a pretext to make it that much more difficult for recipients of SNAP benefits, and retailers authorized to accept same, to participate in this much-needed program.
24. Plaintiff avers that the true motivation for the imposition of permanent disqualification, not only against his store, but against numerous and similar retailers, is to “strangle” access to SNAP to those who need it most and to those who service the eligible participants.
25. The actions of the defendant against the plaintiff in implementing this motivation were, and are, capricious, vexatious, punitive and discriminatory against those who are deeply and generationally impoverished.
26. Plaintiff is seeking a determination that the administrative action imposed against him was/is invalid, from which the determination of permanent disqualification should be reversed.
27. Plaintiff hereby demands a trial by jury pursuant to F.R.C.P. 38(b)(1).

WHEREFORE, plaintiff requests that he be heard at trial pursuant to 7 U.S.C. 2023(a)(15), and should he thereafter prevail, that this court order a reversal of the permanent disqualification now imposed.

By: 

James N. Gross, Esq.
Attorney for Plaintiff
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